IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

MONDAY, THE 16TH JULY 2007 / 25TH ASHADHA 1929

SA.No. 112 of 1994(E)

AS.11/1983 of ADDL.D.C. & ADDL.MACT,ALAPPUZHA.
OS.59/1975 of PRINCIPAL SUB COURT,ALAPPUZHA

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APPELLANTS:
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1. PADMANABHA PILLAI KUMARA PILLAI OF KANDATHIL PUTHENVEETTIL FROM CHENTHURUTHIL, AROOR MURI, AROOR VILLAGE.
   (DIED. LRs impleaded as petitioners 19 to 24)
2. PADMANABHA PILLAI SREEDHARAN PILLAI OF DO. DO.
3. PADMANABHA PILLAI THANKAPPAN PILLAI OF DO. DO.
4. PARVATHY AMMA THANKAMMA OF DO. DO.
5. THANKAMMA JAGADAMMA OF DO. DO.
6. PARVATHY AMMA SUMATHY AMMA OF DO. DO.
7. SUMATHY AMMA VALSALAKUMARI OF DO. DO.
8. KUMARA PILLAI KARTHIKEYAN OF DO. DO.
9. KUMARA PILLAI UNNIKRISHNAN OF DO. DO.
10. KUMARA PILLAI ASOKKUMAR OF DO. DO.
11. KUMARA PILLAI SANJIV OF DO. DO.
12. SUMATHY AMMA SASIKALA OF DO. DO.
13. KUMARA PILLAI RAJIV OF DO. DO.
14. KUMARA PILLAI LAL OF DO. DO.
15. JAGADAMMA SUDHEER OF DO. DO.
16. VYJEW OF DO. DO.

17. JAGADAMMA DEPAKUMARI OF DO. DO. (NOW MAJOR)

18. VALSALAKUMARI VIDYA OF DO. DO.(NOW MAJOR)

addl. 19. THANKAMMA KUMARA PILLAI OF MANDATHIL PUTHENVEETTIL FROM CHENTHURUTHIL, AROOR MURI,AROOR VILLAGE.

20. KUSHALAKUMARI, DO. DO.

21. RAMESH BABU, DO. DO.DO

22. MADHUSOODHANAN, DO. DO.DO

23. PRAVEENKUMAR, DO. DO.DO

24. BEENA, DO. DO.DO

(PETITIONERS 19 TO 24 ARE IMPLEADED AS ADDL. APPELLANTS 19 TO 24 AS PER ORDER DTD.17.9.2001 IN CMP 1609/2001)

BY ADV. SRI.R.RAMADAS

RESPONDENTS:
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1. PADMANABHA PILLAI VELAYUDHAN PILLAI, CHENTHURUTHIL, AROOR MURI, AROOR VILLAGE(DIED. LRs IMPELADED)

2. JAYAKUMAR, S/O KRISHNA PILLAI OF DO.(MINOR AGED 15 YRS.)

3. ANIL KUAMR, S/O KRISHNA PILLAI OF DO. (MINOR AGED 13 YRS.)

4. GOVINDAPILLAI RAMAN PILLAI OF CHENTHURUTHIYIL, AROOR MURI, AROOR VILLAGE (DIED. LRs impleaded)

5. KALLYANI AMMA KAVUKUTTY AMMA OF DO.DO.(DIED LRs.recorded)

6. PADMANABHA PILLAI THANKAPPAN PILLAI OF DO. DO.DO

7. PADMANABHA PILLAI RAJAPPAN PILLAI OF DO.DO

8. KALLYANI AMMA LAKSHMI AMMA OF DO. DO.DO

9. PADMANABHA PILLAI LAKSHMANAN PILLAI OF DO. DO.DO

10. PADMANABHA PILLAI NARAYANA PILLAI, OF DO. DO.DO (DIED LRs IMPLEADED AS ADDITIONAL RESPONDENTS 38 TO 41)

11. PADMANABHA PILLAI BHARGAVAN PILLAI OF DO. DO.DO

12. LAKSHMI AMMA MEENAKSHI AMMA OF CHENTHURUTHIL, AROOR MURI, AROOR VILLAGE.

13. LAKSHMI AMMA VILASAMMA OF DO. DO.

14. MEENAKSHY AMMA BABU OF DO. DO. (NOW MAJOR)

15. MEENAKSHY AMMA RAVIKUMAR OF DO. (NOW MAJOR)

16. MEENAKSHY AMMA RAJEEV OF DO. DO.(NOW MAJOR)

17. KAVAMMA KARTHYAYANI AMMA OF KANJIRAMPARAMBIL, AOOR MURI, AROOR VILLAGE (DIED LRs impleaded)

18. KARTHYAYANI AMMA MONI AMMA OF DO. DO. (DIED. LRS IMPLEADED AS R42 & R43)

19. KARTHYAYANI AMMA SARASAMMA OF DO. DO.

20. KARTHYAYANI AMMA SAVITHRI AMMA OF DO. DO.DO

21. KRISHNA PILLAI SIVASWAMI PILLAI OF DO. DO.DO

22. KRISHNA PILLAI MUKUNDAN PILLAI OF DO. DO.

23. KRISHNA PILLAI CHANDRA BOSE OF DO. DO.DO

24. AZEEZ NARAYANA PILLAI, CHENTHURUTHIL, AROOR MURI, AROOR VILLAGE (DIED LRs impleaded)

25. MEENAKSHY AMMA ASA OF VILANGOOR HOUSE, DO. MURI DO. VILLAGE.

26. MEENAKSHY AMMA SHEEJA OF DO. DO.DO

27. KALLYANI AMMA PARVATHY AMMA OF KANDATHIL PUTHEN VEETTIL FROM CHENTHURUTHIL, AROOR VILLAGE. (DIED LRs impleaded)

ADDL. 28. MEENAKSHI AMMA, WIDOW OF PADMANABHA PILLAI, VELAYUDHAN PILLAI OF KANDATHIL PUTHENVEETTIL FROM CHENTHURUTHIL, AROOR MURI, AROOR VILLAGE.

29. RADHAKRISHNAN, RESIDING AT DO. DO.

30. AGILKUMAR, RESIDING AT DO. DO.DO

31. VINODKUMAR, RESIDING AT DO. DO.

32. SATHEESHKUMAR (MINOR 11 YEARS) BY GUARDIAN NOTICES 28TH RESPONDENT DO. DO.

(ADDL.R28 TO 32 ARE IMPELADED AS PER ORDER DTD.3.7.1996 IN CMP 701/1994 AS LEGAL REPRESENTATIVES OF DECEASED IST RESPONDENT)

33. SANTHA, WIDOW OF AZEEZ, NARAYANA PILLAI, CHENTHURUTHIL AROOR MURI, AROOR VILLAGE.

34. MADHU (MINOR 16 YEARS), S/O 33ND RESPONDENT BY GUARDIAN 33RD RESPONDENT)

(ADDL.RESPONDENTS 33 AND 34 ARE IMPLEADED AS THE LEGAL HEIRS OF DECEASED 24TH RESPONDENT AS PER ORDER DTD. 10.3.1995 IN CMP 1533/1994).

35. NANI AMMA JANAKI AMMA, WIDOW OF GOVINDA PILLAI, RAMAN PILLAI, RESIDING IN `JANAKI NILAYAM', AROOR MURI, AROOR VILLAGE, AROOR P.O.

36. CHILDREN, RAMAN PILLAI SREENIVASAN PILLAI, RESIDING IN DO. DO.DO

37. RADHA MANI, `SAI PRABHA', CHITTEPARAMBU, INDIRA BHAI ROAD, EDAPPALLY.

(ADDL.R35 TO R37 ARE IMPLEADED AS LEGAL REPRESENTATIVES OF DECEASED 4TH RESPONDENT AS PER ORER DTD.4.10.1995 IN CMP 1030/1995).

38. OMANA NARAYANA PILLAI (47), WIDOW OF PADMANABHA PILLAI NARAYANA PILLAI OF KANDATHIL PUTHENVEETTIL FROM CHENTHURUTHIL, AROOR MURI, AROOR VILLAGE.

39. CHILDREN: GOPAKUMAR V.N.(24 YEARS) OF DO. DO.

40. RAJESH V.N.(22 YEARS) OF DO. DO.DO

41. RANJIT KUMAR V.N.(20 YEARS) OF DO. DO.

(ADDL.R38 TO R41 ARE IMPLEADED AS LRs OF DECEASED 10TH RESPONDENT AS PER ORDER DTD.13.10.2003 IN CMP 2445/1999).

42. RAJESWARY, VISHNU VIHAR, AROOR P.O., ALLEPPEY DIST.

43. CINI, THUNDIL HOUSE, KURAVANTHODU, PUNNAPRA P.O., ALLEPPEY DISTRICT.

(ADDL.R42 AND R43 ARE IMPLEADED AS LEGAL REPRESENTATIVES OF DECEASED R18 AS PER ORDER IN I.A.2080/2004 DTD.22.6.2005.)

(IT IS RECORDED THAT RESPONDENTS 5,17 AND 27 DIED AND 18 TO 23 AND APPELLANTS 1 TO 4 AND 6 ARE THE LRs OF DECEASED R5,17 AND 27 RESPECTIVELY AS PER ORDER DTD.13.10.2003 ON MEMO DTD.29.9.2003 BEARING CF 5235/2003).

BY ADV. SRI.M.KRISHNAN NAIR R2&R3
SRI.B.GOPAKUMAR
SRI.P.J.JOSEPH PANICKASSERY R9,11TO 16,25,26,38 TO 41
SRI.V.P.RAGHURAJ

THIS SECOND APPEAL HAVING BEEN FINALLY HEARD ON 16/07/2007, HE COURT ON DELIVERED THE FOLLOWING:

M.SASIDHARAN NAMBIAR,J

S.A.112/1994

Dated this the 16th day of July, 2007

JUDGMENT

The appellants originally filed the suit in 1972 as O.S.38/1972 seeking a decree for maintenance allowance contending that plaint schedule properties are Tharvad properties. After coming into force of Joint Hindu Family System (Abolition) Act, the suit was amended seeking a decree for partition and allotment of their separate share. In the suit, it was contended by appellants that plaint schedule properties are the properties belonging to their Tharvadu and hence they are to be divided between the plaintiffs and the defendants who are the members of the marumakkathayam taraward when it stood abolished by Joint Family System (Abolition) Act 1976. Defendants 3 to 6 together resisted the suit contending that item No.1 of the plaint schedule property is not available for partition. It was contended that the property was originally obtained by their deceased mother Kalyani and brother Padmanabha Pillai as per independant lease and they defaulted to pay the rent and so landlord terminated the lease and recovered possession of the property and thereafter an independent

lease was obtained by third defendant in 1950 as per oral lease arrangement with liability of annual rent of Rs.60/= and third defendant has been in possession of the property as a tenant since then and therefore item No.1 of plaint schedule properties is not available for partition. When the suit was pending, the third defendant filed O.A.3512/1972 before Land Tribunal. The claim for tenancy raised by third defendant in the suit was referred to the Land Tribunal under Section 125(3) of Kerala Land Reforms Act. By that time O.A.3512/1972 was disposed under Ext.A2 order holding that third defendant is not a tenant. In view of the said finding, Land Tribunal rendered a finding that third defendant is not a cultivating tenant. As is bound to, Munsiff accepted that finding and held that third defendant is not a cultivating tenant. In view of that finding, a preliminary decree for partition was passed. Defendants 4 to 6 challenged the decree and judgment before the District court, Alappuzha in A.S.11/1983. Learned Sub Judge originally dismissed the appeal. It was challenged before this court in S.A.18/1986. By that time, the appeal filed by third defendant challenging Ext.A2 order was dismissed by the Appellate Authority (Land Reforms) confirming Ext.A2 order. It was challenged before this court in O.P.10012/1983. This court heard the said O.P. and the Second Appeal together and

disposed of by a common judgment dated 20.8.1990. This court found that when third defendant filed an application before the Land Tribunal for purchase of jenmam right, the same question was being agitated before Munsiff court, and in such circumstances Land Tribunal should not have rendered a finding before the civil court decide that issue. This court also found that first appellate court has jurisdiction to consider the correctness of the finding rendered by the Munsiff accepting the finding of the Land Tribunal and also the correctness of the finding of the Land Tribunal. Relying on the decision of a Division Bench of this Court in **Parameswaran Thampi v Podiyan Thomas** (1984 KLT 397) this court held that first appellate court has not exercised the appellate jurisdiction vested in it by adverting to all the evidence on record. It was also found that when the question of tenancy was being considered by the civil court and one party filed an application before the Land Tribunal, the Tribunal should have waited for the decision of the civil court. It was also found that Appelalte Authority also should not dismissed the appeal before the civil court finally decide the question. This court therefore set aside the judgment of Appellate Authority (Land Reforms) as well as that of the First Appellate Court. District Judge was directed to reconsider the claim for tenancy independently and the first appeal was remanded. Appellate

Authority (Land Reforms) was directed to dispose the appeal LRAS 447/1977 after the disposal of A.S.11/1983 by District Court Alappuzha.

Learned District Judge, after remand, as per judgment dated 10.7.1992 upheld the claim of tenancy raised by third defendant holding that Ext.A3 lease deed executed by Kalyani and Padmanabha Pillai relied on by the plaintiffs was not proved to be acted upon. Relying on the evidence adduced by third defendant, the tenancy set up by third defendant was upheld. The preliminary decree for partition in respect of Item No.1 of plaint schedule property was set aside. It is challenged in the appeal. By that time the Appellate Authority (Land Reforms) dismissed LRAS 447/1977 for default. It was challenged before this Court by filing CRP 883/1993. But the CRP was also dismissed as revision petitioner failed to take steps to implead the legal heirs of the deceased respondents. Second appeal was admitted formulating the following substantial question of law:

1) Whether the order in O.A.3512/1972 as confirmed in LRAS 477/1977 does not operate as res judicata, as against the plea of third defendant that he is a tenant?

2) Whether the finding of the first appellate court that third defendant is a tenant, is sustainable in view of the admission of the

third defendant that Kurumba Kalyani and Padmanabha Pillai obtained plaint schedule property on lease and there is no evidence to prove that that the said lease was extinguished?

2. Learned counsel appearing for appellants and respondents were heard.

3. The learned counsel appearing for the appellants relying on the full bench decision of this court in **Muhammed Haji and others v Kunhunni Nair and others** (1993 KLJ 1) argued that decision of the Land Tribunal regarding the existence of a tenancy will operate as res judicata in a subsequent suit or proceeding and will be a bar for further decision on the same point either by the Land Tribunal or by the civil court. The full bench relying on the earlier full bench decisions of this court in **Koran v Kamaln Shetty** (1977 KLT 358) **Govindan Gopalan v Raman Gopalan**(1978 KLT 315) and **Kesava Bhat v Subraya Bhat**(1979 KLT 766) answered that question as follows:-

> "We have elaborately dealt with the three Full Bench decisions of this Court, in Koran's case (1977 KLT 358); Govindan Gopalan's case (1978 KLT 315) and Kesava Bhat's case (1979 KLT 766), since they are binding on us. The Full Bench decision in Koran's case (1977 KLT 358) was referred to with approval in the later Full Bench decision in Govindan Gopalan's case (1978 KLT 315). Similarly, the decision in Govindan Gopalan's case was referred to with approval in the Full Bench decision in Kesava Bhat's case (1979 KLT 766). In the light of the Full Bench decisions in Govindan Gopalan's case

> (1978 KLT 315), at page 322, paragraph 14, and Kesava Bhat's case 1979 KLT 766) at page 771-paragraph 5 - we have to hold that the Land Tribunal is a court or Tribunal of exclusive jurisdiction. In the light of the decisions in the above three Full Benches, we have to further hold that the general principle of res judicata will apply to decisions rendered by the Land Tribunal. The decision of the Land Tribunal regarding the existence of a tenancy will be res judicata in a subsequent civil court or proceeding and will be a bar for the further decision the same point, either by the Land Tribunal or by a Civil Court".

4. Once the Land Tribunal has finally decided the question of tenancy, it cannot be disputed that, that question cannot be reagitated by either the civil court or the Land Tribunal in view of the principles of resjudicata.

5. But the question is when the decision of the Land Tribunal was rendered after the civil court has seized of the matter and during the pendency of the suit and before the final decision by the civil court, whether the decision of the Tribunal on the question of tenancy operates as bar of res judicata. That exactly was the question considered by the Division Bench of this Court in **Parameswaran Thampi v Podiyan Thomas** (1984 KLT 397). Following this decision in the earlier second appeal, this court remanded the suit back to the first appellate court and also directed Appellate Authority (Land Reforms) to wait for the decision of the civil court.

The Division Bench held:

> The Land Tribunal is a creature of the statute controlled by its provisions. While it cannot traverse outside its jurisdiction, it can function only subject to certain inherent limitations. It is as much bound by the principle of lis pendens just as it cannot flinch from the path of natural justice. When the order made on a reference under S.125(3) by the Land Tribunal is deemed to be a finding of a civil court "for the purpose of the appeal", there is a statutory clearance for the supramacy of the decision of the civil court. In such cases, therefore, the final decision of the civil court on the question of tenancy has to prevail.
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> When the question of tenancy is in issue in a civil court, a party to that proceeding cannot by pass the court, and seek to obtain redress from a Tribunal by filing a petition under S.72 of the Act. An attempt thus made to invite a decision on the question of tenancy by the Tribunal during the pendency of the suit cannot be encouraged or supported. The Tribunal shall either wait till the civil court renders its decision, or if the Tribunal proceeds to enter any finding, on the tenancy, it will only be a tentative decision subject to the final decision of the civil court. S.72 postulates a decision on the status of the applicant as a cultivating tenant and a consequent order for transfer of the landlord's rights. The first aspect is subject to the decision of a civil court which is already seized of the matter in the pending suit. The second aspect which is consequential directing transfer of the landlord's rights is the prerogative of the Land Tribunal. The application of the doctrine of lis pendense in such a case therefore is not inconsistent with any provisions of the Act. Thus, in this case, the third defendant can secure a transfer of the plaintiff's rights only when the question of his tenancy is finally determined in the suit. The decision now rendered by the Land Tribunal in

> S.M.1754/56 or the appellate authority in A.A.174 of 1974 cannot be operative to enable assignment of the landlord's rights. The right to purchase the plaintiff's rights will arise only after the final decision in the suit and depending on its result".

Therefore the fact that Ext.A2 order was subsequently confirmed by the Appellate Authority during the pendency of the suit will not prevent third defendant from claiming tenancy right in the suit as the tenancy right was claimed much prior to the decision of the Land Tribunal on the question of tenancy.

5. But the crucial question is whether third defendant has established the tenancy right claimed by him. What was contended by third defendant in the written statement was that item No.1 of plaint schedule properties was originally obtained by Kalyani and Padmanabha Pillai, from the landlord Kambakaran family. It was contended that subsequently the lease was terminated for non-payment of the annual rent and the landlord obtained possession of the property and thereafter in 1950 an oral lease was granted in favour of the third defendant. Therefore the case of plaintiff is that item No.1 of the plaint schedule properties was originally obtained on lease by Kalyani and Padmanabha Pillai was not only not disputed but was admitted in the written statement. What was contended was only that the said lease was subsequently terminated and landlord

obtained possession of the property and thereafter an oral lease was granted in favour of third defendant. In view of the said contention, it is for the third defendant to prove that the admitted lease in favour of Kalyani and Padmanabha Pillai was terminated and the leasehold properties was either surrendered by the lessees or the landlord has terminated the lease and taken possession of the leasehold property. There is absolutely no evidence on this aspect. Learned counsel appearing for the contesting respondents argued that what was intended by the respondents was that the lease was terminated and the property was taken possession under Ext.B7 judgment and B3 delivery receipt. The said argument could have been accepted, if Ext.B7 judgment was in respect of the lease in favour of Kalyani and Padmanabha Pillai. On the other hand, Ext.B7 shows that the said lease was not in favour of Kalyani and Padmanabha Pillai, but was a lease of 1069 ME in favour of first defendant in that suit. Under Ext.B7 that lease was terminated. Ext.B3 is the delivery receipt pursuant to which the said leasehold property was taken delivery of. The case of plaintiff was that though Ext.B7 judgment was passed, the property was not taken delivery of and instead Ext.A3 lease was created in favour of Kalyani and Padmanabha Pillai. True, there is no evidence to prove that possession was handed over under Ext.A3, but when the

contesting defendants themselves admitted that the property was in the possession of Kalyani and Padmanabha Pillai on lease, no further evidence is necessary to prove that aspect. There is no evidence to prove that the lease was terminated. It probabilise the case set up by the plaintiff that pursuant to Ext.A3 Kalyani and Padmanabha Pillai obtained possession of the property. If that be so, in 1950 an oral lease could not have been obtained by the third defendant, who is none other than the daughter of third defendant. Unfortunately, First Appellate Court did not consider this aspect and relying on Exts.B9 and B10 receipts produced by third defendant from the receiver appointed in the Arbitration O.P. pending before the District court, Alappuzha in respect of the properties of the family of the landlord, it was held that third defendant was a tenant. Even if the rent was paid by the third defendant, if the lease was in favour of her mother and Padmanabha Pillai, third defendant cannot claim independent right under the said payment. Though DW2 was examined, he had no personal knowledge with regard to the lease and he has only stated that rent was received from the third defendant and receipt was issued. In the absence of evidence to prove that there was a surrender of lease by Kalyani and Padmanabha Pillai or that the lease was terminated and possession was taken by the landlord, there could not have been an oral lease in

favour of third defendant as claimed by him. Therefore on the facts and evidence, it can only be held that third defendant has no tenancy right as claimed by him and item No.1 of the plaint schedule property is available for partition.

The second appeal is allowed. The judgment of the Additional District Court in A.S.11/1983 is set aside. The preliminary decree passed by the sub court Alappuzha in O.S.59/1975 is restored.

M.SASIDHARAN NAMBIAR,
JUDGE

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M.SASIDHARAN NAMBIAR,J.

S.A.112/1994

JUDGMENT

16/07/2007